

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

THE RESEARCH FOUNDATION OF
STATE UNIVERSITY OF NEW YORK,

Plaintiff,

vs.

BRUKER CORPORATION f/k/a BRUKER
BIOSCIENCES CORPORATION, BRUKER
BIOSPIN GMBH, BRUKER BIOSPIN
CORPORATION, and VARIAN, INC.,

Defendants.

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) CIVIL CASE NO. _____
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) **JURY TRIAL DEMANDED**
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COMPLAINT

Plaintiff The Research Foundation of State University of New York (the “Research Foundation”) files this Complaint against Defendants Bruker Corporation f/k/a Bruker Biosciences Corporation, Bruker BioSpin GmbH, Bruker BioSpin Corporation, and Varian Inc. (collectively, “Defendants”) for patent infringement, and alleges the following:

PARTIES

1. Plaintiff Research Foundation is a nonprofit educational corporation duly organized and existing under the laws of the State of New York having a principal office at 35 State Street, Albany, New York 12207.

2. Upon information and belief, Defendant Bruker Corporation, formerly known as Bruker Biosciences Corporation, is a corporation duly organized and existing under the laws of the State of Delaware having a principal office at 40 Manning Road, Billerica, Massachusetts 01821.

3. Upon information and belief, Bruker BioSpin GmbH is a corporation organized under the laws of Germany having its principal place of business at Silberstreifen 4, 76287 Rheinstetten, Germany. Upon further information and belief, Bruker BioSpin GmbH is a nonresident of New York that engages in business in New York but does not maintain a regular place of business or a designated agent for service of process in New York. Bruker BioSpin GmbH may be served with process in Germany pursuant to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents.

4. Upon information and belief, Defendant Bruker BioSpin Corporation is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts having a principal office at 15 Fortune Drive, Billerica, Massachusetts 01821. Bruker BioSpin GmbH, Bruker BioSpin Corporation, and Bruker Corporation will be collectively referred to herein as “Bruker.”

5. Upon information and belief, Defendant Varian, Inc. is a corporation duly organized and existing under the laws of the State of Delaware having a principal office at 3120 Hansen Way, Palo Alto, California 94304. Varian, Inc. will be referred to herein as “Varian.”

JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to 28 U.S.C. §1332 because of the existing diversity of citizenship between the parties and because the matter in controversy exceeds the sum of seventy-five thousand dollars (\$75,000), exclusive of interest and costs. This action also arises under the patent laws of the United States, Title 35 of the United States Code. Thus, the Court’s jurisdiction is also proper under 35 U.S.C. § 271, *et seq.*, and 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over each Defendant. Each Defendant has conducted and does conduct business within the State of New York. Each Defendant, directly or through intermediaries (including distributors, retailers, and others), ships, distributes, offers for sale, and sells its products in the United States, the State of New York, and the Northern District of New York. Each Defendant has purposefully and voluntarily placed one or more of its infringing products, as described below, into the stream of commerce with the expectation that they will be purchased by consumers in the Northern District of New York. These infringing products have been and continue to be purchased by consumers in the Northern District of New York. Each Defendant has committed the tort of patent infringement within the State of New York and, more particularly, within the Northern District of New York.

8. Upon investigation and information, products at issue are offered for sale on Bruker websites at both www.bruker.com and www.bruker-biospin.com in the State of New York and the Northern District of New York.

9. Upon investigation and information, products at issue are offered for sale on the Varian website at www.varianinc.com in the State of New York and the Northern District of New York.

10. Venue is proper in this Court under 28 U.S.C. §§1391 (b) and (c), as well as 28 U.S.C. §1400(b).

PATENT INFRINGEMENT

11. The Research Foundation is the owner of all rights, title, and interest in and under United States Patent No. 6,831,459 (“the ‘459 patent”), entitled “Method of Using G-matrix Fourier Transformation Nuclear Magnetic Resonance (GFT NMR) Spectroscopy for Rapid Chemical Shift Assignment and Secondary Structure Determination of Proteins,” which was duly

and legally issued on December 14, 2004. A true and correct copy of the '459 patent is attached hereto as **Exhibit A**.

12. The '459 patent is valid and enforceable.

13. Bruker has infringed and continues to infringe the claims of the '459 patent by practicing methods of the '459 patent and by making, using, selling, offering for sale, and/or importing into the United States, without authority, spectrometers and related products that practice the methods of the '459 patent.

14. Varian has infringed and continues to infringe the claims of the '459 patent by practicing methods of the '459 patent and by making, using, selling, offering for sale, and/or importing into the United States, without authority, spectrometers and related products that practice the methods of the '459 patent.

15. Through such direct acts of infringing the '459 patent, Defendants Bruker and Varian have also induced infringement of the '459 patent under 35 U.S.C. § 271(b), and have contributed to the infringement of the '459 patent under 35 U.S.C. § 271(c).

16. As a direct and proximate result of Defendants' acts of patent infringement, the Research Foundation has been and continues to be injured and has sustained and will continue to sustain substantial damages in an amount not presently known.

17. Defendants have knowingly and willfully infringed the '459 patent.

18. The Research Foundation has no adequate remedy at law against these acts of patent infringement. Unless Defendants are preliminarily and permanently enjoined from its unlawful infringement of the '459 Patent, the Research Foundation will suffer irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, the Research Foundation requests that this Court grant the following relief against Defendants:

- A. Judgment that Defendants have infringed and continue to infringe the '459 patent;
- B. Judgment that Defendants' infringement has been willful;
- C. Judgment against Defendants awarding damages to the Research Foundation;
- D. A preliminary and thereafter a permanent injunction against Defendants' infringement of the '459 patent;
- E. Judgment that this is an exceptional case and that the Research Foundation be awarded their expenses, costs, and attorneys' fees pursuant to 35 U.S.C. § 285;
- F. Judgment that the Research Foundation be awarded increased damages in an amount not less than three times the amount of damages found by the jury or assessed by this Court pursuant to 35 U.S.C. § 284; and
- G. Judgment awarding interest on the Research Foundation's damages and such other relief as the Court deems just and proper.

JURY DEMAND

In accordance with Federal Rules of Civil Procedure 38 and 39, the Research Foundation asserts their rights under the Seventh Amendment of the United States Constitution and demand a trial by jury on all issues.

Dated: January 21, 2009. Respectfully submitted,

/s/David P. Miranda

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